

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6103

PETITION OF MAO EAM
(Hearing held October 19, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, December 15, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(c). The existing accessory structure/shed requires a variance of two (2) feet as it is within three (3) feet of the side lot line. The required setback is five (5) feet.

Michael Heiserman, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 36, Block C, Connecticut Gardens Subdivision, located at 11735 College View Drive, Silver Spring, Maryland, 20902, in the R-60 Zone (Tax Account No. 01248800).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The existing 14 x 20 foot accessory structure/shed requires a two foot variance.
2. The petitioner testified that the shed was built without a building permit and that he was unaware of the required setbacks for the structure. The petitioner testified that the topography on the left side of his property is steeply sloped and that locating the shed elsewhere on the property would require re-grading. The petitioner testified that a reduction in the size of the shed would not require a variance and that the topography and the size of his lot are similar to other properties in his neighborhood. See, Exhibit Nos. 4(a) [site plan] and 9 [zoning vicinity map].

3. Mr. Heiserman testified that it would be very difficult to move the shed because of the lot's sloping topography and that if the shed were moved, the structure would require a much deeper foundation.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that while the topography of the petitioner's lot slopes, any "uniqueness" or "peculiarity" caused by the sloping topography does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance. The Board notes that new construction could be located on the property without the need for a variance and that the existing conditions of petitioner's lot are similar to other neighboring properties in his immediate area.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of two (2) feet from the required five (5) foot side lot line setback for the existing accessory structure/shed is denied.

The Board adopted the following Resolution:

Board member Caryn L. Hines did not participate in the vote of this Resolution. On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 15th day of December, 2005.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.